

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>JOYCE HIGGINS, as Personal</b>	)	
<b>Representative of the Estate of</b>	)	
<b>CHARLES HIGGINS, Deceased, and</b>	)	
<b>MICHELLE HIGGINS,</b>	)	
	)	
<b>Plaintiffs,</b>	)	<b>No. 1:14-CV-06945</b>
	)	
<b>v.</b>	)	<b>TRIAL BY JURY IS DEMANDED</b>
	)	
<b>JOSEPH VITELLO, M.D.,</b>	)	
<b>JESSE BROWN VA MEDICAL</b>	)	
<b>CENTER - CHICAGO,</b>	)	
<b>and UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Defendants,</b>	)	

**COMPLAINT AT LAW**

*NOW COME* the plaintiffs, **JOYCE HIGGINS**, as Personal Representative of the Estate of **CHARLES HIGGINS**, Deceased, and **MICHELLE HIGGINS**, by the through their attorney, Holly S.C. Wojcik of the law firm of Theodoros & Rooth P.C., and for their causes of action against the defendants, **JOSEPH VITELLO, M.D., JESSE BROWN VA MEDICAL CENTER - CHICAGO**, a veterans hospital located in Chicago, Illinois, and the **UNITED STATES of AMERICA** allege and say the following:

**STATEMENT OF JURISDICTION AND VENUE**

1. The plaintiff, **JOYCE HIGGINS**, is a citizen of Munster, Indiana.
2. The Estate of **CHARLES HIGGINS** is domiciled in Crown Point, Indiana.

3. The plaintiff, **MICHELLE HIGGINS**, is the biological daughter of **CHARLES HIGGINS**, and is a citizen of Munster, Indiana.

4. The defendant, **JESSE BROWN VA MEDICAL CENTER-CHICAGO**, is a Veterans hospital located in Chicago, Illinois.

5. This Cause involves an amount in controversy in excess of SEVENTY-FIVE THOUSAND (\$75,000.00) DOLLARS, exclusive of costs and interest.

6. This Court has subject matter jurisdiction over this cause because, upon information and belief, the defendant **JOSEPH VITELLO, M.D.**, was an employee and/or agent of defendant, **JESSE BROWN VA MEDICAL CENTER - CHICAGO**, a veterans hospital located in Chicago, Illinois and operated by the **UNITED STATES of AMERICA**.

7. The medical care at issue was rendered in Chicago, Illinois at **JESSE BROWN VA CLINIC-CHICAGO** and venue is proper pursuant to 28 U.S.C. § 1391.

8. The plaintiffs have complied with the requirements of the Federal Tort Claims Act by filing a Standard Form 95, Notice of Tort Claim, on 11/17/12 and 11/5/13, which are attached hereto as Exhibits "A" and "B."

**COUNT I – CLAIM FOR CHARLES HIGGINS’  
FOR WRONGFUL DEATH**

**NOW COMES JOYCE HIGGINS**, as Personal Representative of the Estate of **CHARLES HIGGINS**, Deceased, by her attorney, Holly S.C. Wojcik of the law firm of Theodoros & Rooth P.C., and for her cause of action against the defendant, **JOSEPH VITELLO, M.D.**, alleges and says the following:

1. At all times relevant hereto, **Charles Higgins** (the “**Decedent**”) was a patient of **Joseph Vitello, M.D.**, (“**Vitello**”) and the **Jesse Brown VA Medical Center-Chicago**.

2. At all times relevant hereto, **Vitello** was a physician duly licensed to practice medicine under the laws of the State of Illinois.

3. At all times relevant hereto, **Jesse Brown VA Medical Center - Chicago** is a hospital which provided medical care for the benefit of United States Veterans which was funded and controlled by the **United States of America**.

4. At all times relevant hereto, **Vitello**, was a physician, agent, and/or employee of the **Jesse Brown VA Medical Center - Chicago** and the **United States of America**, located at 820 South Damen Avenue, Chicago, IL 60612.

5. On or about September 12, 2012, and continuing thereafter, **the defendants** undertook the care and treatment of the **Decedent**, born July 21, 1941.

6. That at the time and place referred to in Paragraphs 1 and 4, and at all times relevant herein, the defendants, each of them, owed the **Decedent** a duty to exercise reasonable and ordinary care for his health and safety in rendering medical care.

7. That notwithstanding the duty it owed to the Decedent, **Charles Higgins**, the defendant, **Joseph Vitello, M.D.**, the **Jesse Brown VA Medical Center – Chicago**, and the **United States of America**, by and through its employees and agents, breached that duty by committing one or more of the following acts or omissions, including but not limited to:

- a. carelessly and negligently failing to properly resuscitate the patient with generalized peritonitis or high-grade sepsis; or
- b. carelessly and negligently failing to consider or return to the patient to the operating room for a exploratory surgery on a emergent basis; or
- c. carelessly and negligently failing to perform a radical resection of the colon; or

- d. carelessly and negligently failing to diagnose and treat the **Decedent's** anastomatic leak; or
- e. carelessly and negligently failing to perform complete removal of tumors.

8. As a further direct and proximate result of said acts and omissions on the part of **the defendants**, the **Decedent** died on May 9, 2013.

9. At all times relevant hereto, the plaintiff, **Joyce Higgins** was lawfully married to the **Decedent**.

10. At all times relevant hereto, the plaintiff, **Michelle Higgins** was the biological daughter of the **Decedent**.

11. As a further direct and proximate result of one or more of the foregoing negligent acts and omissions on the part of the defendants, the **Decedent's** above-referred next-of-kin sustained the following injuries and damages: pecuniary damages and losses, the loss of the decedent's, support, society, love, affection, guidance, companionship; sorrow, grief, and mental suffering; and all other damages and injuries allowable under the Illinois Wrongful Death Act.

12. On March 19, 2014, the plaintiff, **Joyce Higgins**, was appointed Personal Representative of the Estate of **Charles Higgins**, Deceased, and as a further direct and proximate result of said negligence on the part of the defendants, the Estate of **Charles Higgins** incurred funeral and burial expenses. A true and correct copy of the Order of Appointment and Letters of Administration are attached hereto, incorporated herein by reference, and labeled Exhibits "C" and "D."

**WHEREFORE**, plaintiff, **JOYCE HIGGINS**, as Personal Representative of the Estate of **CHARLES HIGGINS**, Deceased, demands judgment against **JOSEPH VITELLO, M.D.**, in a sum in the amount of Seven Million Dollars (\$7,000,000), attorney fees and litigation costs pursuant to 210 ILCS 45/3-602.

Respectfully submitted,

/s/ Holly S.C. Wojcik

Holly S.C. Wojcik, #23197-64

Attorney for the plaintiffs

**THEODOROS & ROTH, P.C.**

8750 Broadway, Suite A

Merrillville, IN 46410

(219) 769-6393

**COUNT II – CLAIM FOR CHARLES HIGGINS’  
FOR WRONGFUL DEATH**

***NOW COMES* JOYCE HIGGINS**, as Personal Representative of the Estate of **CHARLES HIGGINS**, Deceased, by her attorney, Holly S.C. Wojcik of the law firm of Theodoros & Rooth P.C., and for her cause of action against the defendant, **JESSE BROWN VA MEDICAL CENTER-CHICAGO**, alleges and says the following:

1. At all times relevant hereto, **Charles Higgins** (the “**Decedent**”) was a patient of **Joseph Vitello, M.D.**, (“**Vitello**”) and the **Jesse Brown VA Medical Center-Chicago**.

2. At all times relevant hereto, **Vitello** was a physician duly licensed to practice medicine under the laws of the State of Illinois.

3. At all times relevant hereto, **Jesse Brown VA Medical Center - Chicago** is a hospital which provided medical care for the benefit of United States Veterans which was funded and controlled by the **United States of America**.

4. At all times relevant hereto, **Vitello**, was a physician, agent, and/or employee of the **Jesse Brown VA Medical Center - Chicago** and the **United States of America**, located at 820 South Damen Avenue, Chicago, IL 60612.

5. On or about September 12, 2012, and continuing thereafter, **the defendants** undertook the care and treatment of the **Decedent**, born July 21, 1941.

6. That at the time and place referred to in Paragraphs 1 and 4, and at all times relevant herein, the defendants, each of them, owed the **Decedent** a duty to exercise reasonable and ordinary care for his health and safety in rendering medical care.

7. That notwithstanding the duty it owed to the Decedent, **Charles Higgins**, the defendant, **Joseph Vitello, M.D.**, the **Jesse Brown VA Medical Center – Chicago**, and the **United States of America**, by and through its employees and agents, breached that duty by committing one or more of the following acts or omissions, including but not limited to:

- a. carelessly and negligently failing to properly resuscitate the patient with generalized peritonitis or high-grade sepsis; or
- b. carelessly and negligently failing to consider or return to the patient to the operating room for a exploratory surgery on a emergent basis; or
- c. carelessly and negligently failing to perform a radical resection of the colon; or
- d. carelessly and negligently failing to diagnose and treat the **Decedent's** anastomatic leak; or
- e. carelessly and negligently failing to perform complete removal of tumors.

8. As a further direct and proximate result of said acts and omissions on the part of **the defendants**, the **Decedent** died on May 9, 2013.

9. At all times relevant hereto, the plaintiff, **Joyce Higgins** was lawfully married to the **Decedent**.

10. At all times relevant hereto, the plaintiff, **Michelle Higgins** was the biological daughter of the **Decedent**.

11. As a further direct and proximate result of one or more of the foregoing negligent acts and omissions on the part of the defendants, the **Decedent's** above-referred next-of-kin sustained the following injuries and damages: pecuniary damages and losses, the loss of the

decendent's, support, society, love, affection, guidance, companionship; sorrow, grief, and mental suffering; and all other damages and injuries allowable under the Illinois Wrongful Death Act.

12. On March 19, 2014, the plaintiff, **Joyce Higgins**, was appointed Personal Representative of the Estate of **Charles Higgins**, Deceased, and as a further direct and proximate result of said negligence on the part of the defendants, the Estate of **Charles Higgins** incurred funeral and burial expenses. A true and correct copy of the Order of Appointment and Letters of Administration are attached hereto, incorporated herein by reference, and labeled Exhibits "C" and "D."

**WHEREFORE**, plaintiff, **JOYCE HIGGINS**, as Personal Representative of the Estate of **CHARLES HIGGINS**, Deceased, demands judgment against **JESSE BROWN VA MEDICAL CENTER-CHICAGO** in a sum in the amount of Seven Million Dollars (\$7,000,000), attorney fees and litigation costs pursuant to 210 ILCS 45/3-602.

Respectfully submitted,  
/s/ Holly S.C. Wojcik  
Holly S.C. Wojcik, #23197-64  
Attorney for the plaintiffs

**THEODOROS & ROTH, P.C.**  
8750 Broadway, Suite A  
Merrillville, IN 46410  
(219) 769-6393

**COUNT III – CLAIM FOR CHARLES HIGGINS’  
FOR WRONGFUL DEATH**

**NOW COMES JOYCE HIGGINS**, as Personal Representative of the Estate of **CHARLES HIGGINS**, Deceased, by her attorney, Holly S.C. Wojcik of the law firm of Theodoros & Rooth P.C., and for her cause of action against the defendant, **UNITED STATES of AMERICA**, alleges and says the following:

1. At all times relevant hereto, **Charles Higgins** (the “**Decedent**”) was a patient of **Joseph Vitello, M.D.**, (“**Vitello**”) and the **Jesse Brown VA Medical Center-Chicago**.

2. At all times relevant hereto, **Vitello** was a physician duly licensed to practice medicine under the laws of the State of Illinois.

3. At all times relevant hereto, **Jesse Brown VA Medical Center - Chicago** is a hospital which provided medical care for the benefit of United States Veterans which was funded and controlled by the **United States of America**.

4. At all times relevant hereto, **Vitello**, was a physician, agent, and/or employee of the **Jesse Brown VA Medical Center - Chicago** and the **United States of America**, located at 820 South Damen Avenue, Chicago, IL 60612.

5. On or about September 12, 2012, and continuing thereafter, the defendants undertook the care and treatment of the **Decedent**, born July 21, 1941.

6. That at the time and place referred to in Paragraphs 1 and 4, and at all times relevant herein, the defendants, each of them, owed the **Decedent** a duty to exercise reasonable and ordinary care for his health and safety in rendering medical care.

7. That notwithstanding the duty it owed to the Decedent, Charles Higgins, the defendant, **Joseph Vitello, M.D.**, the **Jesse Brown VA Medical Center – Chicago**, and the **United States of America**, by and through its employees and agents, breached that duty by committing one or more of the following acts or omissions, including but not limited to:

- a. carelessly and negligently failing to properly resuscitate the patient with generalized peritonitis or high-grade sepsis; or
- b. carelessly and negligently failing to consider or return to the patient to the operating room for an exploratory surgery on an emergent basis; or
- c. carelessly and negligently failing to perform a radical resection of the colon; or



- d. carelessly and negligently failing to diagnose and treat the **Decedent's** anastomatic leak; or
- e. carelessly and negligently failing to perform complete removal of tumors.

8. As a further direct and proximate result of said acts and omissions on the part of **the defendants**, the **Decedent** died on May 9, 2013.

9. At all times relevant hereto, the plaintiff, **Joyce Higgins** was lawfully married to the **Decedent**.

10. At all times relevant hereto, the plaintiff, **Michelle Higgins** was the biological daughter of the **Decedent**.

11. As a further direct and proximate result of one or more of the foregoing negligent acts and omissions on the part of the defendants, the **Decedent's** above-referred next-of-kin sustained the following injuries and damages: pecuniary damages and losses, the loss of the decedent's, support, society, love, affection, guidance, companionship; sorrow, grief, and mental suffering; and all other damages and injuries allowable under the Illinois Wrongful Death Act.

12. On March 19, 2014, the plaintiff, **Joyce Higgins**, was appointed Personal Representative of the Estate of **Charles Higgins**, Deceased, and as a further direct and proximate result of said negligence on the part of the defendants, the Estate of **Charles Higgins** incurred funeral and burial expenses. A true and correct copy of the Order of Appointment and Letters of Administration are attached hereto, incorporated herein by reference, and labeled Exhibits "C" and "D."

**WHEREFORE**, plaintiff, **JOYCE HIGGINS**, as Personal Representative of the Estate of **CHARLES HIGGINS**, Deceased, demands judgment against **UNITED STATES of AMERICA** in a sum in the amount of Seven Million Dollars (\$7,000,000), attorney fees and litigation costs pursuant to 210 ILCS 45/3-602.

Respectfully submitted,  
/s/ Holly S.C. Wojcik  
Holly S.C. Wojcik, #23197-64  
Attorney for the plaintiffs

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**COUNT IV – CLAIM FOR CHARLES HIGGINS’  
FOR WRONGFUL DEATH**

***NOW COMES MICHELLE HIGGINS***, by her attorney, Holly S.C. Wojcik of the law firm of Theodoros & Rooth P.C., and for her cause of action against the defendant, **JOSEPH VITELLO, M.D.**, alleges and says the following:

1. At all times relevant hereto, **Charles Higgins** (the “**Decedent**”) was a patient of **Joseph Vitello, M.D.**, (“**Vitello**”) and the **Jesse Brown VA Medical Center-Chicago**.
2. At all times relevant hereto, **Vitello** was a physician duly licensed to practice medicine under the laws of the State of Illinois.
3. At all times relevant hereto, **Jesse Brown VA Medical Center - Chicago** is a hospital which provided medical care for the benefit of United States Veterans which was funded and controlled by the **United States of America**.
4. At all times relevant hereto, **Vitello**, was a physician, agent, and/or employee of the **Jesse Brown VA Medical Center - Chicago** and the **United States of America**, located at 820 South Damen Avenue, Chicago, IL 60612.
5. On or about September 12, 2012, and continuing thereafter, the defendants undertook the care and treatment of the **Decedent**, born July 21, 1941.

6. That at the time and place referred to in Paragraphs 1 and 4, and at all times relevant herein, the defendants, each of them, owed the **Decedent** a duty to exercise reasonable and ordinary care for his health and safety in rendering medical care.

7. That notwithstanding the duty it owed to the **Decedent, Charles Higgins**, the defendant, **Joseph Vitello, M.D.**, the **Jesse Brown VA Medical Center – Chicago**, and the **United States of America**, by and through its employees and agents, breached that duty by committing one or more of the following acts or omissions, including but not limited to:

- a. carelessly and negligently failing to properly resuscitate the patient with generalized peritonitis or high-grade sepsis; or
- b. carelessly and negligently failing to consider or return to the patient to the operating room for a exploratory surgery on a emergent basis; or
- c. carelessly and negligently failing to perform a radical resection of the colon; or
- d. carelessly and negligently failing to diagnose and treat the **Decedent's** anastomatic leak; or
- e. carelessly and negligently failing to perform complete removal of tumors.

8. As a further direct and proximate result of said acts and omissions on the part of the defendants, the **Decedent** died on May 9, 2013.

9. At all times relevant hereto, the plaintiff, **Joyce Higgins** was lawfully married to the **Decedent**.

10. At all times relevant hereto, the plaintiff, **Michelle Higgins** was the biological daughter of the **Decedent**.

11. As a further direct and proximate result of one or more of the foregoing negligent acts and omissions on the part of the defendants, the **Decedent's** above-referred next-of-kin sustained the following injuries and damages: pecuniary damages and losses, the loss of the

decendent's, support, society, love, affection, guidance, companionship; sorrow, grief, and mental suffering; and all other damages and injuries allowable under the Illinois Wrongful Death Act.

12. On March 19, 2014, the plaintiff, **Joyce Higgins**, was appointed Personal Representative of the Estate of **Charles Higgins**, Deceased, and as a further direct and proximate result of said negligence on the part of the defendants, the Estate of **Charles Higgins** incurred funeral and burial expenses. A true and correct copy of the Order of Appointment and Letters of Administration are attached hereto, incorporated herein by reference, and labeled Exhibits "C" and "D."

**WHEREFORE**, plaintiff, **MICHELLE HIGGINS** demands judgment against **JOSEPH VITELLO, M.D.**, in a sum in the amount of Seven Million Dollars (\$7,000,000), attorney fees and litigation costs pursuant to 210 ILCS 45/3-602.

Respectfully submitted,

/s/ Holly S.C. Wojcik  
Holly S.C. Wojcik, #23197-64  
Attorney for the plaintiffs

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8750 Broadway, Suite A  
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**COUNT V – CLAIM FOR CHARLES HIGGINS’  
FOR WRONGFUL DEATH**

**NOW COMES MICHELLE HIGGINS**, by her attorney, Holly S.C. Wojcik of the law firm of Theodoros & Rooth P.C., and for her cause of action against the defendant, **JESSE BROWN VA MEDICAL CENTER-CHICAGO**, alleges and says the following:

1. At all times relevant hereto, **Charles Higgins** (the “**Decedent**”) was a patient of **Joseph Vitello, M.D.**, (“**Vitello**”) and the **Jesse Brown VA Medical Center-Chicago**.

2. At all times relevant hereto, **Vitello** was a physician duly licensed to practice medicine under the laws of the State of Illinois.

3. At all times relevant hereto, **Jesse Brown VA Medical Center - Chicago** is a hospital which provided medical care for the benefit of United States Veterans which was funded and controlled by the **United States of America**.

4. At all times relevant hereto, **Vitello**, was a physician, agent, and/or employee of the **Jesse Brown VA Medical Center - Chicago** and the **United States of America**, located at 820 South Damen Avenue, Chicago, IL 60612.

5. On or about September 12, 2012, and continuing thereafter, the defendants undertook the care and treatment of the **Decedent**, born July 21, 1941.

6. That at the time and place referred to in Paragraphs 1 and 4, and at all times relevant herein, the defendants, each of them, owed the **Decedent** a duty to exercise reasonable and ordinary care for his health and safety in rendering medical care.

7. That notwithstanding the duty it owed to the **Decedent**, **Charles Higgins**, the defendant, **Joseph Vitello, M.D.**, the **Jesse Brown VA Medical Center – Chicago**, and the **United States of America**, by and through its employees and agents, breached that duty by committing one or more of the following acts or omissions, including but not limited to:

- a. carelessly and negligently failing to properly resuscitate the patient with generalized peritonitis or high-grade sepsis; or
- b. carelessly and negligently failing to consider or return to the patient to the operating room for a exploratory surgery on a emergent basis; or
- c. carelessly and negligently failing to perform a radical resection of the colon; or
- d. carelessly and negligently failing to diagnose and treat the **Decedent's** anastomatic leak; or

e. carelessly and negligently failing to perform complete removal of tumors.

8. As a further direct and proximate result of said acts and omissions on the part of **the defendants**, the **Decedent** died on May 9, 2013.

9. At all times relevant hereto, the plaintiff, **Joyce Higgins** was lawfully married to the **Decedent**.

10. At all times relevant hereto, the plaintiff, **Michelle Higgins** was the biological daughter of the **Decedent**.

11. As a further direct and proximate result of one or more of the foregoing negligent acts and omissions on the part of the defendants, the Decedent's above-referred next-of-kin sustained the following injuries and damages: pecuniary damages and losses, the loss of the decedent's, support, society, love, affection, guidance, companionship; sorrow, grief, and mental suffering; and all other damages and injuries allowable under the Illinois Wrongful Death Act.

12. On March 19, 2014, the plaintiff, **Joyce Higgins**, was appointed Personal Representative of the Estate of **Charles Higgins**, Deceased, and as a further direct and proximate result of said negligence on the part of the defendants, the Estate of **Charles Higgins** incurred funeral and burial expenses. A true and correct copy of the Order of Appointment and Letters of Administration are attached hereto, incorporated herein by reference, and labeled Exhibits "C" and "D."

**WHEREFORE**, plaintiff, **MICHELLE HIGGINS**, demands judgment against **JESSE BROWN VA MEDICAL CENTER-CHICAGO** in a sum in the amount of Seven Million Dollars (\$7,000,000), attorney fees and litigation costs pursuant to 210 ILCS 45/3-602.

Respectfully submitted,  
/s/ Holly S.C. Wojcik  
Holly S.C. Wojcik, #23197-64  
Attorney for the plaintiffs

**THEODOROS & ROTH, P.C.**

8750 Broadway, Suite A

Merrillville, IN 46410

(219) 769-6393

**COUNT VI – CLAIM FOR CHARLES HIGGINS’  
FOR WRONGFUL DEATH**

***NOW COMES MICHELLE HIGGINS***, by her attorney, Holly S.C. Wojcik of the law firm of Theodoros & Rooth P.C., and for her cause of action against the defendant, **UNITED STATES of AMERICA**, alleges and says the following:

1. At all times relevant hereto, **Charles Higgins** (the “**Decedent**”) was a patient of **Joseph Vitello, M.D.**, (“**Vitello**”) and the **Jesse Brown VA Medical Center-Chicago**.

2. At all times relevant hereto, **Vitello** was a physician duly licensed to practice medicine under the laws of the State of Illinois.

3. At all times relevant hereto, **Jesse Brown VA Medical Center - Chicago** is a hospital which provided medical care for the benefit of United States Veterans which was funded and controlled by the **United States of America**.

4. At all times relevant hereto, **Vitello**, was a physician, agent, and/or employee of the **Jesse Brown VA Medical Center - Chicago** and the **United States of America**, located at 820 South Damen Avenue, Chicago, IL 60612.

5. On or about September 12, 2012, and continuing thereafter, the defendants undertook the care and treatment of the **Decedent**, born July 21, 1941.

6. That at the time and place referred to in Paragraphs 1 and 4, and at all times relevant herein, the defendants, each of them, owed the **Decedent** a duty to exercise reasonable and ordinary care for his health and safety in rendering medical care.

7. That notwithstanding the duty it owed to the **Decedent, Charles Higgins**, the defendant, **Joseph Vitello, M.D.**, the **Jesse Brown VA Medical Center – Chicago**, and the **United States of America**, by and through its employees and agents, breached that duty by committing one or more of the following acts or omissions, including but not limited to:

- a. carelessly and negligently failing to properly resuscitate the patient with generalized peritonitis or high-grade sepsis; or
- b. carelessly and negligently failing to consider or return to the patient to the operating room for a exploratory surgery on a emergent basis; or
- c. carelessly and negligently failing to perform a radical resection of the colon; or
- d. carelessly and negligently failing to diagnose and treat the **Decedent's** anastomatic leak; or
- e. carelessly and negligently failing to perform complete removal of tumors.

8. As a further direct and proximate result of said acts and omissions on the part of **the defendants**, the **Decedent** died on May 9, 2013.

9. At all times relevant hereto, the plaintiff, **Joyce Higgins** was lawfully married to the **Decedent**.

10. At all times relevant hereto, the plaintiff, **Michelle Higgins** was the biological daughter of the **Decedent**.

11. As a further direct and proximate result of one or more of the foregoing negligent acts and omissions on the part of the defendants, the **Decedent's** above-referred next-of-kin sustained the following injuries and damages: pecuniary damages and losses, the loss of the decedent's, support, society, love, affection, guidance, companionship; sorrow, grief, and mental suffering; and all other damages and injuries allowable under the Illinois Wrongful Death Act.



12. On March 19, 2014, the plaintiff, **Joyce Higgins**, was appointed Personal Representative of the Estate of **Charles Higgins**, Deceased, and as a further direct and proximate result of said negligence on the part of the defendants, the Estate of **Charles Higgins** incurred funeral and burial expenses. A true and correct copy of the Order of Appointment and Letters of Administration are attached hereto, incorporated herein by reference, and labeled Exhibits "C" and "D."

**WHEREFORE**, plaintiff, **MICHELLE HIGGINS**, demands judgment against **UNITED STATES of AMERICA** in a sum in the amount of Seven Million Dollars (\$7,000,000), attorney fees and litigation costs pursuant to 210 ILCS 45/3-602.

Respectfully submitted,  
/s/ Holly S.C. Wojcik  
Holly S.C. Wojcik, #23197-64  
Attorney for the plaintiffs

**THEODOROS & ROTH, P.C.**  
8750 Broadway, Suite A  
Merrillville, IN 46410  
(219) 769-6393

**COUNT VII – ESTATE OF CHARLES HIGGINS' SURVIVAL ACTION**

**NOW COMES JOYCE HIGGINS**, as Personal Representative of the Estate of **CHARLES HIGGINS**, Deceased, by her attorney, Holly S.C. Wojcik of the law firm of Theodoros & Rooth P.C., and for her cause of action against the defendant, **JOSEPH VITELLO, M.D.**, alleges and says the following:

1. At all times relevant hereto, **Charles Higgins** (the "**Decedent**") was a patient of **Joseph Vitello, M.D.**, ("**Vitello**") and the **Jesse Brown VA Medical Center-Chicago**.

2. At all times relevant hereto, **Vitello** was a physician duly licensed to practice medicine under the laws of the State of Illinois.

3. At all times relevant hereto, **Jesse Brown VA Medical Center - Chicago** is a hospital which provided medical care for the benefit of United States Veterans which was funded and controlled by the **United States of America**.

4. At all times relevant hereto, **Vitello**, was a physician, agent, and/or employee of the **Jesse Brown VA Medical Center-Chicago** and the **United States of America**, located at 820 South Damen Avenue, Chicago, IL 60612.

5. On or about September 12, 2012, and continuing thereafter, the defendants undertook the care and treatment of the **Decedent**, born July 21, 1941.

6. That at the time and place referred to in Paragraphs 1 and 4, and at all times relevant herein, the defendants, each of them, owed the **Decedent** a duty to exercise reasonable and ordinary care for his health and safety in rendering medical care.

7. That notwithstanding the duty it owed to the **Decedent, Charles Higgins**, the defendant, **Joseph Vitello, M.D.**, the **Jesse Brown VA Medical Center-Chicago**, and the **United States of America**, by and through its employees and agents, breached that duty by committing one or more of the following acts or omissions, including but not limited to:

- a. carelessly and negligently failing to properly resuscitate the patient with generalized peritonitis or high-grade sepsis; or
- b. carelessly and negligently failing to consider or return to the patient to the operating room for a exploratory surgery on a emergent basis; or
- c. carelessly and negligently failing to perform a radical resection of the colon; or
- d. carelessly and negligently failing to diagnose and treat the anastomatic leak; or
- e. carelessly and negligently failing to perform complete removal of tumors.

8. The **Decedent** died on May 9, 2013.

9. At all times relevant hereto, the plaintiff, **Joyce Higgins** was lawfully married to the **Decedent**.

10. At all times relevant hereto, the plaintiff, **Michelle Higgins** was the biological daughter of the **Decedent**.

11. As a further direct and proximate result of one or more of the foregoing negligent acts and omissions on the part of the defendants, the decedent, **Charles Higgins**, sustained serious and permanent physical injuries, thereby causing him to endure great physical and emotional pain and suffering prior to his death on May 9, 2013, and to suffer all other damages and injuries allowable under the Illinois Survival Act.

12. On March 19, 2014, the plaintiff, **Joyce Higgins**, was appointed Personal Representative of the Estate of **Charles Higgins**, Deceased. A true and correct copy of the Order of Appointment and Letters of Administration are attached hereto, incorporated herein by reference, and labeled Exhibits "C" and "D."

**WHEREFORE**, plaintiff, **JOYCE HIGGINS**, as Personal Representative of the Estate of **CHARLES HIGGINS**, Deceased, demands judgment against **JOSEPH VITELLO, M.D.**, in a sum in the amount of Seven Million Dollars (\$7,000,000), attorney fees and litigation costs pursuant to 210 ILCS 45/3-602.

Respectfully submitted,

/s/ Holly S.C. Wojcik  
Holly S.C. Wojcik, #23197-64  
Attorney for the plaintiffs

**THEODOROS & ROTH, P.C.**  
8750 Broadway, Suite A  
Merrillville, IN 46410  
(219) 769-6393

**COUNT VIII – ESTATE OF CHARLES HIGGINS' SURVIVAL ACTION**

***NOW COMES JOYCE HIGGINS***, as Personal Representative of the Estate of **CHARLES HIGGINS**, Deceased, by her attorney, Holly S.C. Wojcik of the law firm of Theodoros & Rooth P.C., and for her cause of action against the defendant, **JESSE BROWN VA MEDICAL CENTER-CHICAGO**, alleges and says the following:

1. At all times relevant hereto, **Charles Higgins** (the “**Decedent**”) was a patient of **Joseph Vitello, M.D.**, (“**Vitello**”) and the **Jesse Brown VA Medical Center-Chicago**.

2. At all times relevant hereto, **Vitello** was a physician duly licensed to practice medicine under the laws of the State of Illinois.

3. At all times relevant hereto, **Jesse Brown VA Medical Center - Chicago** is a hospital which provided medical care for the benefit of United States Veterans which was funded and controlled by the **United States of America**.

4. At all times relevant hereto, **Vitello**, was a physician, agent, and/or employee of the **Jesse Brown VA Medical Center-Chicago** and the **United States of America**, located at 820 South Damen Avenue, Chicago, IL 60612.

5. On or about September 12, 2012, and continuing thereafter, the defendants undertook the care and treatment of the **Decedent**, born July 21, 1941.

6. That at the time and place referred to in Paragraphs 1 and 4, and at all times relevant herein, the defendants, each of them, owed the **Decedent** a duty to exercise reasonable and ordinary care for his health and safety in rendering medical care.

7. That notwithstanding the duty it owed to the **Decedent, Charles Higgins**, the defendant, **Joseph Vitello, M.D.**, the **Jesse Brown VA Medical Center-Chicago**, and the

**United States of America**, by and through its employees and agents, breached that duty by committing one or more of the following acts or omissions, including but not limited to:

- a. carelessly and negligently failing to properly resuscitate the patient with generalized peritonitis or high-grade sepsis; or
- b. carelessly and negligently failing to consider or return to the patient to the operating room for an exploratory surgery on an emergent basis; or
- c. carelessly and negligently failing to perform a radical resection of the colon; or
- d. carelessly and negligently failing to diagnose and treat the anastomatic leak; or
- e. carelessly and negligently failing to perform complete removal of tumors.

8. The **Decedent** died on May 9, 2013.

9. At all times relevant hereto, the plaintiff, **Joyce Higgins** was lawfully married to the **Decedent**.

10. At all times relevant hereto, the plaintiff, **Michelle Higgins** was the biological daughter of the **Decedent**.

11. As a further direct and proximate result of one or more of the foregoing negligent acts and omissions on the part of the defendants, the decedent, **Charles Higgins**, sustained serious and permanent physical injuries, thereby causing him to endure great physical and emotional pain and suffering prior to his death on May 9, 2013, and to suffer all other damages and injuries allowable under the Illinois Survival Act.

12. On March 19, 2014, the plaintiff, **Joyce Higgins**, was appointed Personal Representative of the Estate of **Charles Higgins**, Deceased. A true and correct copy of the Order of Appointment and Letters of Administration are attached hereto, incorporated herein by reference, and labeled Exhibits "C" and "D."

**WHEREFORE**, plaintiff, **JOYCE HIGGINS**, as Personal Representative of the Estate of **CHARLES HIGGINS**, Deceased, demands judgment against **JESSE BROWN VA MEDICAL CENTER - CHICAGO** in a sum in the amount of Seven Million Dollars (\$7,000,000), attorney fees and litigation costs pursuant to 210 ILCS 45/3-602.

Respectfully submitted,

/s/ Holly S.C. Wojcik  
Holly S.C. Wojcik, #23197-64  
Attorney for the plaintiffs

**THEODOROS & ROTH, P.C.**  
8750 Broadway, Suite A  
Merrillville, IN 46410  
(219) 769-6393

**COUNT IX – ESTATE OF CHARLES HIGGINS' SURVIVAL ACTION**

**NOW COMES JOYCE HIGGINS**, as Personal Representative of the Estate of **CHARLES HIGGINS**, Deceased, by her attorney, Holly S.C. Wojcik of the law firm of Theodoros & Rooth P.C., and for her cause of action against the defendant, **UNITED STATES of AMERICA**, alleges and says the following:

1. At all times relevant hereto, **Charles Higgins** (the “**Decedent**”) was a patient of **Joseph Vitello, M.D.**, (“**Vitello**”) and the **Jesse Brown VA Medical Center-Chicago**.
2. At all times relevant hereto, **Vitello** was a physician duly licensed to practice medicine under the laws of the State of Illinois.
3. At all times relevant hereto, **Jesse Brown VA Medical Center - Chicago** is a hospital which provided medical care for the benefit of United States Veterans which was funded and controlled by the **United States of America**.

4. At all times relevant hereto, **Vitello**, was a physician, agent, and/or employee of the **Jesse Brown VA Medical Center-Chicago** and the **United States of America**, located at 820 South Damen Avenue, Chicago, IL 60612.

5. On or about September 12, 2012, and continuing thereafter, the defendants undertook the care and treatment of the **Decedent**, born July 21, 1941.

6. That at the time and place referred to in Paragraphs 1 and 4, and at all times relevant herein, the defendants, each of them, owed the **Decedent** a duty to exercise reasonable and ordinary care for his health and safety in rendering medical care.

7. That notwithstanding the duty it owed to the **Decedent**, **Charles Higgins**, the defendant, **Joseph Vitello, M.D.**, the **Jesse Brown VA Medical Center-Chicago**, and the **United States of America**, by and through its employees and agents, breached that duty by committing one or more of the following acts or omissions, including but not limited to:

- a. carelessly and negligently failing to properly resuscitate the patient with generalized peritonitis or high-grade sepsis; or
- b. carelessly and negligently failing to consider or return to the patient to the operating room for a exploratory surgery on a emergent basis; or
- c. carelessly and negligently failing to perform a radical resection of the colon; or
- d. carelessly and negligently failing to diagnose and treat the anastomatic leak; or
- e. carelessly and negligently failing to perform complete removal of tumors.

8. The **Decedent** died on May 9, 2013.

9. At all times relevant hereto, the plaintiff, **Joyce Higgins** was lawfully married to the **Decedent**.

10. At all times relevant hereto, the plaintiff, **Michelle Higgins** was the biological

daughter of the **Decedent**.

11. As a further direct and proximate result of one or more of the foregoing negligent acts and omissions on the part of the defendants, the decedent, **Charles Higgins**, sustained serious and permanent physical injuries, thereby causing him to endure great physical and emotional pain and suffering prior to his death on May 9, 2013, and to suffer all other damages and injuries allowable under the Illinois Survival Act.

12. On March 19, 2014, the plaintiff, **Joyce Higgins**, was appointed Personal Representative of the Estate of **Charles Higgins**, Deceased. A true and correct copy of the Order of Appointment and Letters of Administration are attached hereto, incorporated herein by reference, and labeled Exhibits "C" and "D."

**WHEREFORE**, plaintiff, **JOYCE HIGGINS**, as Personal Representative of the Estate of **CHARLES HIGGINS**, Deceased, demands judgment against **THE UNITED STATES OF AMERICA**, in a sum in the amount of Seven Million Dollars (\$7,000,000), attorney fees and litigation costs pursuant to 210 ILCS 45/3-602.

Respectfully submitted,

/s/ Holly S.C. Wojcik  
Holly S.C. Wojcik, #23197-64  
Attorney for the plaintiffs

**THEODOROS & ROTH, P.C.**  
8750 Broadway, Suite A  
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(219) 769-6393



**JURY DEMAND**

***NOW COME*** the plaintiffs, by counsel, and demand trial by jury as to all claims so triable.

Respectfully submitted,

/s/ Holly S.C. Wojcik

Holly S.C. Wojcik, #23197-64

Attorney for the plaintiffs

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